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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/762,438

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Pat Corry

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DAVIDSON, DAVIDSON & KAPPEL, LLC
485 SEVENTH AVENUE, 14TH FLOOR
NEW YORK, NY 10018

EXAMINER

A, PHI DIEU TRAN

ART UNIT

PAPER NUMBER

3637

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/762,438	Applicant(s) CORY, PAT	
	Examiner Phi D. A	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25,27,28 and 30-38 is/are pending in the application.
- 4a) Of the above claim(s) 17-23 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16,24-25,27-28,30-33,35-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. PRODUCT BY PROCESS CLAIM:

“ The subject matter present is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

This policy applies to the limitation of “ constructed by injection molding”.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6-9, 12-16, 24-25, 30, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gust (3123868) in view of Smith (3046613) and LaBrosse (6052959).

Gust shows a protector for a window well comprising a hood (12) in the shape of a quarter sphere comprising a first and second portion, the first portion (see attached) of the hood about perpendicular to a base (bottom surface of part 13), the second portion sloped to deflect precipitation from the first portion, a first outward rim flange (16) extending from the top of the hood for securing the hood to a foundation, a second outward rim flange (15) extending from the bottom of the hood for covering the window well, a plurality of securing member (18), the hood being a single piece, the hood is transparent, plastic, the second outward rim flange covering the entire window well,

Gust does not show the first portion comprising a plurality of slits.

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Smith discloses forming slits, opening, slots (col 3 lines 21-27) to allow for the ventilation of the window well.

LaBrosse discloses slits (between the louvers 46) on a vertical surface (16, 18) to assist in preventing environment water like rain from entering a ventilation cavity.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's protector to show a plurality of slits because having a plurality of slits on the well cover would allow ventilation of the well as taught by Smith, and the slits being covered with louvered would protect the interior protected area from rain water flowing down a steep surface as taught by LaBrosse.

4. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gust (3123868) in view of Smith (3046613) and LaBrosse (6052959).

Gust shows a protector for a window well comprising a hood (12) in the shape of a quarter sphere comprising a first and second portion, the first portion (see attached) of the hood about perpendicular to a base (bottom surface of part 13), the second portion sloped to deflect precipitation from the first portion, a first outward rim flange (16) extending from the top of the hood for securing the hood to a foundation, a second outward rim flange (15) extending from the bottom of the hood for covering the window well, a plurality of securing member (18), the hood being a single piece, the hood is transparent, plastic, the second outward rim flange covering the entire window well,

Gust does not show the first portion comprising a plurality of slits, a hinge coupled to the second portion.

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LaBrosse discloses slits (between the louvers 46) on a vertical surface (16, 18) to assist in preventing environment water like rain from entering a ventilation cavity.

Smith (figure 2) shows forming slits, opening, slots (col 3 lines 21-27) to allow for the ventilation of the window well, a hinge coupled to a second portion of a window well cover to allow the cover to be opened when desired.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's protector to show the first portion comprising a plurality of slits, a hinge coupled to the second portion because having a plurality of slits on the well cover would allow ventilation of the well as taught by Smith, and the slits being covered with louvered would protect the interior protected area from rain water flowing down a steep surface as taught by LaBrosse, and having a hinge at the second portion would allow for the cover to be opened when access to the window well is desired as taught by Smith.

5. Claims 32-33, 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gust (3123868) in view of Smith (3046613), and LaBrosse (6052959).

Gust as modified shows all the claimed limitations except for a hinge secured to the first outward rim flange.

Smith (figure 2) further shows a hinge a hinge secured to the first outward rim flange to allow the cover to be opened when desired.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's modified protector to show a hinge secured to the first outward rim flange because it would allow for the cover to be opened when access to the window well is desired as taught by Smith.

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6. Claims 1-2, 4-7, 9, 10, 12-13, 15, 24, 25-26, 28, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mackes (4330500) in view of Smith (3046613) and LaBrosse (6052959).

Mackes (figure 2) shows a protector for a window well comprising a hood (12) in the shape of a quarter sphere comprising a first and second portion, the first portion of the hood about perpendicular to a base, the second portion sloped to deflect precipitation from the first portion, a first outward rim flange (24') extending from the top of the hood for securing the hood to a foundation, a second outward rim flange (20' or 28) extending from the bottom of the hood for covering the window well, the hood being a single piece, the hood is transparent, plastic, the second outward rim flange covering the entire window well, the hood and flanges being plastic and one piece,

Mackes does not show the first portion comprising a plurality of slits.

Smith discloses forming slits, opening, slots (col 3 lines 21-27) to allow for the ventilation of the window well.

LaBrosse discloses slits (between the louvers 46) on a vertical surface (16, 18) to assist in preventing environment water like rain from entering a ventilation cavity.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's protector to show a plurality of slits because having a plurality of slits on the well cover would allow ventilation of the well as taught by Smith, and the slits being covered with louvered would protect the interior protected area from rain water flowing down a steep surface as taught by LaBrosse.

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7. Claims 3, 8, 11, 14, 16, 27, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mackes (4330500) in view of Smith (3046613), Hoyt (3413769) and LaBrosse (6052959).

Mackes (figure 2) shows a protector for a window well comprising a hood (12) in the shape of a quarter sphere comprising a first and second portion, the first portion of the hood about perpendicular to a base, the second portion sloped to deflect precipitation from the first portion, a first outward rim flange (24') extending from the top of the hood for securing the hood to a foundation, a second outward rim flange (20' or 28) extending from the bottom of the hood for covering the window well, the hood being a single piece, the hood is transparent, plastic, the second outward rim flange covering the entire window well, the hood and flanges being plastic and one piece.

Mackes does not show the first portion comprising a plurality of slits, a plurality of securing members.

Smith discloses forming slits, opening, slots (col 3 lines 21-27) to allow for the ventilation of the window well.

LaBrosse discloses slits (between the louvers 46) on a vertical surface (16, 18) to assist in preventing environment water like rain from entering a ventilation cavity.

Hoyt shows a plurality of securing members (94) securing the first rim flange to a wall.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's protector to show a plurality of slits because having a plurality of slits on the well cover would allow ventilation of the well as taught by Smith, and the slits being covered with louvered would protect the interior protected area from rain water flowing down a

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steep surface as taught by LaBrosse, and having a plurality of securing members would allow for the securing of the first rim flange to the wall as taught by Hoyt.

8. Claims 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mackes (4330500) in view of Smith (3046613), Hoyt (3413769) and LaBrosse (6052959).

Mackes as modified shows all the claimed limitations except for a hinge secured to the first outward rim flange.

Smith further shows a hinge secured to the first outward rim flange to allow for the opening of the cover when desired.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Mackes's modified protector to show a hinge secured to the first outward rim flange because it would allow for the cover to be opened when access to the window well is desired as taught by Smith.

Response to Arguments

1. Applicant's arguments filed 1/8/07 have been fully considered but they are not persuasive.

2. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching,

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suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is found in the references themselves. Smith teaches the advantage/benefit of having ventilation openings for a window well. Labrosse teaches the use of slits forming ventilation openings with louver to prevent rain from entering into the interior of the structure. Combining Gust with Smith and Labrosse, would result in Gust having the enhanced feature of moisture ventilation without having rain entering into the interior thereof. The combination is thus motivated by the references. The argument is thus moot.

With respect to “injection molding”, applicant states that a cover constructed by “injection molding” is substantially different in structure from other well covers in the prior art, examiner respectfully disagrees. The products reasonably appear to be identical or slightly different from each due to their different manufacturing processes. The claims are thus properly treated under the Product by Process limitation policy set forth above. Also, see MPEP 2113 and *In re Brown*. The argument is thus moot.

With respect to claim 15-16, Gust shows second outward rim flange (15) covering the entire window well as claimed. The window well in figure 1 is a quarter sphere, and the rim flange (15) covering completely from one side to the other. The reference thus shows the limitation as claimed. If applicant means “entire window well” to mean something different, applicant is encouraged to put forth the limitations in the claims.

Claim 31, applicant’s argument also moot in view of the reasoning set forth above.

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With respect to claims 32-33, 35-35, and Smith, examiner respectfully points out that Smith shows an outward rim flange (44) as claimed. The rim together with bracket 48 forming a piano hinge as claimed. If applicant means “the outward rim flange” to mean something different, applicant is encouraged to put forth the limitations in the claims

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is found in the references themselves. Smith teaches the advantage/benefit of having ventilation openings for a window well. Labrosse teaches the use of slits forming ventilation openings with louver to prevent rain from entering into the interior of the structure. Combining Mackes with Smith and Labrosse, would result in Gust having the enhanced feature of moisture ventilation without having rain entering into the interior thereof. The combination is thus motivated by the references. The argument is thus moot.

With respect to applicant's statement that Smith is provided as a separate piece from the hood, and that modifying Mackes with Smith would result in a multi-piece window well cover, examiner respectfully disagrees. Mackes is the primary reference with Smith and Labrosse as secondary reference. Smith is relied upon to teach the use of having openings for ventilation in the window well environment. Modifying Mackes with Smith's teaching thus results in Mackes

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having openings for ventilation, not multi-piece as set forth by applicant. The argument is thus moot.

With respect to the outer rim, Mackes shows the second outward rim flange covers the entire window well as claimed. The second flange (20, or 28) extends from one side to the other covering the entire window well. If applicant means “entire window well” to mean something different, applicant is encouraged to put forth the limitations in the claims. The argument is thus moot.

With respect to claims 3, 8, 11, 16, 27, examiner respectfully points out that Hoyt is used to teach a plurality of securing members (940 securing the first rim flange to a wall, not “a first outward rim flange extending from the top of the hood for securing the hood to a foundation. Mackes as modified by Hoyt shows the first rim flange extending from the top of the hood for securing the hood to a foundation and comprising a plurality of securing members. The argument is thus moot.

With respect to claim 16, Mackes also shows the outward rim flange that covers the entire window well as claimed. If applicant means “entire window well” to mean something different, applicant is encouraged to put forth the limitations in the claims. The argument is thus moot.

Applicant’s argument to claim 33 is also moot in view of the reasoning set forth above. The argument is thus moot.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phi Dieu Tran A



4/16/07

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

